IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

CIVIL REVISION APPLICATION NO.631 OF 1998

1. Shri Babusingh Uddhavsingh Pardeshi and Ors. .. Petitioners

v/s.

1. Smt.Vithabai Chchagan Pardeshi
(Since deceased)
1A Rameshsingh N. Pardeshi and ors. .. Respondents

Mr. R.N. Sanghavi for the Petitioners.

CORAM : B.H.MARLAPALLE, J.

DATED : 10th & 17th October, 2005

ORAL JUDGEMENT:

1. This civil revision application challenges the judgment and order rendered by the learned Second Joint Civil Judge, Senior Division at Pune on 25.4.1997 dismissing the Regular Civil Suit No.664 of 1986 filed under section 6 of the Specific Relief Act, 1963.

2. The suit was filed by five plaintiffs who claimed that along with defendant No.2. They were trustees of the proposed trust by name Dagduji

Chotiramsingh Pardeshi Thakur Rajput Trust. As per the plaintiffs, on 13.3.1985, the suit premises viz. flat consisting of two rooms admeasuring about 392.76 sq.ft. on the first floor and one room admeasuring about 143 sq.ft. with a open terrace of 781.81 sq.ft. on the second floor of the suit building located at City Survey No.73, Nana Peth, Pune was taken on monthly rent of Rs.25/- from its owner Shri Dhondiram Pardeshi. The plaintiff was using the suit premises for office purpose and second floor premises including the open terrace was being utilised for holding marriage ceremony and social gatherings etc. On 27.12.1985, the landlord Dhondiram Pardeshi died and thus, defendant No.1 who is the wife of Dhondiram's brother became the land-lady of the suit premises. She allegedly threatened to dispossess the plaintiffs and therefore, they approached the Small Causes Court and filed small cause suit No.86 of 1986 for perpetual injunction on 16.1.1986. Notice was issued against the defendant No.1 and on the next date when the notice was served viz. on 17.1.1986, the defendant No.1 along with three other persons forcibly dispossessed the plaintiffs from the suit premises on the terrace on the second floor while the plaintiffs

were conducted a meeting. On the application moved by the plaintiffs, the Commissioner was appointed and on on 27.1.1986, when the Court Commissioner came to visit the suit premises, plaintiff No.4 opened the lock for inspection and after the Court Commissioner left the premises, the defendant No.1 allegedly put her own lock and took forcible possession on that day of the premises of the terrace on the second floor.

3. The learned Judge of the trial court framed issues and the first issue was regarding the maintainability of the suit on behalf of the proposed trust. The trial court referred to the provisions of section 31 of the Bombay Public Trust Act, 1950 and held that an unregistered trust was not maintainable. The trial court though held that it had jurisdiction to entertain and try the suit, proceeded to record a finding that the plaintiffs were not in actual possession of the suit premises till 17.1.1986 and there was no evidence to show that the plaintiffs were dispossessed from the suit premises on 17.1.1986. The trial court, therefore, held that the plaintiffs were not entitled for the relief of repossession of the suit premises.

4. The plaintiff No.5 was examined at Exhibit 43. Plaintiff No.4 was examined at Exhibit 86, Court Commissioner was examined as P.W.3 and on behalf of the defendant, defendant No.4 Dhondiram Pardeshi examined at Exhibit 177. There was no dispute that the suit property belonged to late Dhondiram Pardeshi and the husband of defendant No.1 but by way of sale deed dated 21.11.1950 placed at Exhibit 50, Dhondiram had sold his shop of the suit property to his brother Chchagan and, thus, Chchagan became the exclusive owner of the suit property. Chchagan died in the year 1980 and he had executed the Will on 23.6.1977 (Exhibit 139-A). The Will was not disputed and as per the said Will, Chchagan had created a life interest in respect of the suit property firstly in favour of his brother Dhondiram and thereafter in favour of his wife Vithabai and finally, the property was to devolve on the trust consisting of 6 trustees named in the Will viz. defendant Nos.1A to 1E.

5. Mr. Sanghavi, the learned counsel for the petitioners submitted that the suit premises were taken on rent by Shri Baburao son of Shankarrao Chavan

and not by the proposed Trust or any Trustee jointly. In support of these contentions the learned counsel has shown from record and proceedings the receipts dated 25/3/1985, 6/7/1985 and 5/10/1985 issued by the original landlord in favour of Baburao Shankarrao Chavan. These receipts pertain to the suit premises. If that be so, it was open for Shri Baburao Chavan to file the civil suit in his individual capacity as a tenant. This has not been done and instead the plaintiffs agitated their cause in RCS No.664 of 1986 on the basis that the proposed Trust was the tenant.

6. So far as the issue nos.4 and 5 are concerned, i.e. the actual possession of the plaintiffs over the suit premises till 17/1/1986 and the alleged forcible dispossession on 17/1/1986, the trial court noted the allegation that when the Court Commissioner visited the suit premises on 17/1/1986 the defendant no.1 had forcibly dispossessed them by locking the premises after the Court Commissioner left the same. It is also alleged that the defendant no.1 locked the premises in the presence of the Court Commissioner. However, the defendant no.1 had refuted this allegation. Two witnesses were examined on behalf of

the plaintiffs i.e. Baburao Chavan (P.W.1) Exh.43 and Hiraman Pardeshi (P.W.2) Exh.86. P.W.1 in his depositions before the trial court stated that the plaintiffs were dispossessed on 17/1/1986, so far as the first floor is concerned and they were dispossessed forcibly on 27/1/1986 in respect of second and third floors. It would be in the interest of plaintiff no.5 that no findings are recorded on these two issues, more so when Mr. Sanghavi the learned counsel for the petitioners submitted that the plaintiff no.5 be left to his remedy to institute a fresh suit as a tenant. It is for him to make out a case of his forcible and illegal possession either on 17/1/1986 or 27/1/1986 and more so when the rent receipts as referred to hereinabove have been issued by the landlord in favour of the said plaintiff. The findings recorded by the trial court on issues no.1 and 4 are supported by the evidence adduced by the respective parties. The contents of the lease deed dated 15/3/1985 (Exh.44) were not found to be reliable by the trial court on comparison with the contents of the receipts (Exh.45 to 47). P.W.1 had admitted before the trial court that the said rent receipts were probably in his own hand writing. P.W.1 in his

cross-examination admitted that Dhondiram Pardeshi was residing in suit premises till 27/1/1986 and D.W.1 Deepak in his depositions before the trial court stated that defendant no.1, her husband and Dhondiram were residing together.

7. Thus, the reasoning given by the trial court cannot be said to be perverse or manifestly erroneous so as to call for interference while exercising the revisionary powers and the challenge to the impugned order is devoid of merits.

8. The Revision Application must, therefore, fail and the same is hereby dismissed. Rule discharged with no order as to costs. It is clarified that Plaintiff No.5 Baburao Shankarrao Chavan is not precluded in instituting a fresh suit in his individual capacity so as to prove that he was de facto and de jure tenant of the suit premises.

(B.H. MARLAPALLE, J.)